

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Graham Burney Brown, #237443,)
Plaintiff,) C.A. No. 4:10-1169-MBS
vs.)
SCDC Kirland R and E,)
Defendant.)

)

ORDER

Plaintiff Graham Burney Brown, proceeding *pro se*, filed the within action pursuant to 42 U.S.C. § 1983 on May 11, 2010 against SCDC (South Carolina Department of Corrections) Kirkland R and E (“Kirkland”). Plaintiff is currently housed at Allendale Correctional Institution. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling. On July 7, 2010, Plaintiff was granted leave to proceed *in forma pauperis*. That same day, the Magistrate Judge issued a Report and Recommendation recommending that Plaintiff’s complaint be summarily dismissed without issuance and without service and process. On July 15, 2010, Plaintiff filed objections to the Report and Recommendation.

BACKGROUND

In his complaint, Plaintiff alleges that while housed at Kirkland in January 2010, he injured his left foot when he fell from the top bunk of the bunk beds in his cell. Plaintiff states that his foot is “probably broken” and that despite putting in a sick call, he has not received medical attention for his injury. Pl. Compl. at 3. Plaintiff contends that he has attempted to resolve his complaint using internal grievance procedures as well as by “put[ting] a request to” the warden of Kirkland, but that

he has received no responses. *Id.* Plaintiff seeks monetary damages. *Id.* at 5.

DISCUSSION

The Magistrate Judge issued a Report and Recommendation in which he recommended that this case be dismissed for failure to name a defendant who is amenable to suit in a § 1983 action. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight and the responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination on any portions of the Report and Recommendation to which a specific objection is made. *Id.* The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge. 28 U.S.C. § 636(b)(1).

In his objections, Plaintiff contends that he sued “‘SCDC Kirkland R and E’ because you can not sue the head because they are not sole[ly] responsible. . . .” Pl. Obj. at 1. This objection is without merit. SCDC Kirkland R and E is not subject to suit pursuant to § 1983. *See* 42 U.S.C. § 1983 (only “persons” are subject to suit under § 1983); *Brooks v. Pembroke City Jail*, 722 F. Supp. 1294, 1301 (E.D.N.C. 1989) (“Claims under § 1983 are directed at ‘persons’ and the jail is not a person amenable to suit.”). Moreover, supervisory officials may be amenable to suit under § 1983 if a plaintiff states a proper claim. *See Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994).

Plaintiff also contends that it would be “unfair” to dismiss his complaint without giving him an “opportunity to amend to overcome the deficiency.” *Id.* Rule 15(c) of the Federal Rules of Civil Procedure governs amendments to pleadings. Rule 15(a)(1)(a) permits parties to amend their pleadings once as a matter of course within 21 days after serving them. *Id.* Because Plaintiff’s complaint has not yet been served, Plaintiff may amend his pleading to name one or more proper

defendants.

CONCLUSION

Based upon the foregoing, SCDC Kirkland R and E is dismissed as a defendant in this case. The court grants Plaintiff twenty (20) days from the entry of this order to file an amended complaint naming one or more proper defendant. Failure to file an amended complaint will result in the dismissal of this case with prejudice for failure to respond to the court's order. *See* Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

s/ Margaret B. Seymour

The Honorable Margaret B. Seymour
United States District Judge

October 5, 2010
Columbia, South Carolina